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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,080	10/17/2003	Subir Varma	164.1011.07	8213
22883	7590	05/31/2005	EXAMINER	
SWERNOFSKY LAW GROUP PC P.O. BOX 390013 MOUNTAIN VIEW, CA 94039-0013			PEZZLO, JOHN	
			ART UNIT	PAPER NUMBER
			2662	

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/688,080

Applicant(s)

VARMA, SUBIR

Examiner

John Pezzlo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6 and 12-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 12-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

I. Claims 1, 3-6, 12-16, and 17-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Malmgren et al. (WO 00/22865) hereinafter Malmgren.

1. Regarding claims 1, 12, and 17 – Malmgren discloses selecting physical and media access control (MAC) parameters for automatic retransmission, the physical and MAC parameters for the downstream portion being selected independently for each customer premises equipment of the plurality of customer premises equipment and physical and MAC parameters for the upstream portion being selected independently for said each customer premises equipment, refer to Figures 1 and 2 and column 8 lines 28 to 33. Malmgren discloses a TDMA wireless system in which the base station controller dynamically changes the physical and MAC layer parameters for both the uplink and downlink channels and provides the information in a control frame structure either the BCCH or the ACH, refer to Figures 1 and 2 and column 2 lines 1 to 15 and column 7 lines 24 to 33 and claims 2, 6, and 18.

Malmgren discloses including the physical and MAC parameters in a control section of a frame, the control section for sending control information downstream, refer to Figures 1 and 2 and column 9 lines 10 to 16 and claim 4 and 13.

2. Regarding claims 3, 13, and 18 – Malmgren discloses the physical and MAC parameters are dynamically selected based on previous communication between the base station controller and said each customer premises equipment, refer to Figures 1 and 2 and column 2 lines 1 to 15 and column 7 lines 24 to 33 and column 8 lines 28 to 33.

3. Regarding claims 4, 14, and 19 – Malmgren discloses sending the control section of the frame downstream from the base station controller to the customer premises equipment, whereby the base station controller controls physical and MAC parameters for both upstream and downstream retransmission, refer to Figures 1 and 2 and column 2 lines 1 to 15 and column 7 lines 24 to 33 and column 8 lines 28 to 33.

4. Regarding claims 5, 15, and 20 – Malmgren discloses dynamically and adaptively determining new selected physical and MAC parameters for automatic retransmission, wherein the base station controller determines the new selected physical and MAC parameters in response to conditions of a wireless communication link with said each CPE, refer to Figures 1 and 2 and column 2 lines 1 to 15 and column 7 lines 24 to 33 and column 8 lines 28 to 33.

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5. Regarding claims 6, 16, and 21 - Malmgren discloses the physical and MAC parameters for automatic retransmission are selected responsive to a number of bytes successfully sent, refer to Figures 1 and 2 and column 2 lines 1 to 15 and column 7 lines 25 to 30.

### ***Response to Arguments***

Applicant's arguments filed 21 March 2005 have been fully considered but they are not persuasive. Applicant argues on page 10 of the response that the reference, Malmgren, does not disclose selecting physical and media access control parameters for automatic retransmission. The examiner respectfully disagrees. The examiner cites the following sections of the Malmgren reference in order to show that the reference discloses selecting physical and media access control parameters for automatic retransmission. Page 1 line 25 to page 2 line 5, Malmgren discloses that uplink and downlink reception qualities differ and separate parameters need to be defined for the uplink and the downlink channels to optimize the performance and that part of the performance can be improved by the use of ARQ (Automatic ReQuest for retransmission) capabilities. Page 3 lines 14 to 30, Malmgren discloses that GPRS does not allow changing channel coding during the retransmission phase. Page 4, lines 25 to 30, Malmgren discloses selecting physical layer parameters (RSSI) for the uplink and downlink parameters. Malmgren discloses, from the above, in the background of the invention, the need for selecting independently for the uplink and the downlink parameters such as coding and packet error rate and bit error rate for transmission and retransmission in uplink and downlink channels, these are the goals of the Malmgren reference (patent) as disclosed in the background of the invention. In

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the detail of the invention, Malmgren discloses in Figures 2 and 3 and page 7 lines 19 to 33 and page 8 lines 14 to 26 and page 9 lines 10 to 16, wherein the MAC and physical layer parameters are selected independently for the uplink and the downlink and these parameters are used for the implementation of the ARQ retransmissions needed to insure reliable and accurate transmissions at the physical layer. The communication parameters used for the downlink and uplink are conveyed to the mobile terminals as part of the frame structure and used by the uplink during the normal and retransmission phases of the communication session.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. Ahmavaara et al. (US 6,842,445 B2) discloses a retransmission method with soft combining in a telecommunications system.
2. Malmgren et al. (US 6,807,154 B1) discloses a link and radio cell adaptation in TDD systems.
3. Yonge, III et al. (US 6,522,650 B1) discloses a multicast and broadcast transmission with partial ARQ.
4. Hamalainen et al. (US 5,729,541) discloses a system for transmitting packet data in radio telephone TDMA systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Pezzlo whose telephone number is (571) 272-3090. The examiner can normally be reached on Monday to Friday from 8:30 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou, can be reached on (571) 272-3088. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C.

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or faxed to:

(703) 872-9306

For informal or draft communications, please label "PROPOSED" or "DRAFT"

Hand delivered responses should be brought to:

Jefferson Building

2A15

500 Dulany Street

Alexandria, VA. 22313

John Pezzlo

27 May 2005

A handwritten signature in black ink, appearing to read 'J. Pezzlo', with a stylized flourish at the end.

**JOHN PEZZLO**  
**PRIMARY EXAMINER**